

Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

JUAN DAVILA-BAJANA,
PLAINTIFF,

-VS-

TIM HOLOHAN, ET AL.,
DEFENDANTS.

FILED
APR -6 2003
CLERK
U.S. DISTRICT COURT

CIVIL ACTION NO.

JUDGE: SEAN J. MCLAUGHLIN

MAGISTRATE JUDGE: SUSAN BAXTER

CONSOLIDATED MOTION FOR, AND BRIEF IN SUPPORT OF:
ENLARGEMENT OF TIME TO FILE WITNESSES' NARRATIVES

NOW COMES Juan Davila-Bajana, Pro Se (Plaintiff); and hereby respectfully submits his Motion seeking an Enlargement of Time to file his Witnesses' Narratives.

PROCEDURAL BACKGROUND

At this juncture, Plaintiff's Cause has been before this Honorable Court for an extended period of time and he need not reiterate the complete Procedural History as he assumes familiarity with same by the Court.

But of import to the present Motion, is the fact that there is presently pending before the Court a [SECOND] Motion to Dismiss, or in the alternative, Summary Judgement filed by the Defendants. And Plaintiff has filed his Response to same in a timely manner.

However, as of the date of the filing of this Motion, Plaintiff has not received the Reply from the Defendants to his Response. As such, it would appear that the Defendants have waived their opportunity to file same and that the Court may now dispose of same on the pleadings that are before it.

Additionally, Plaintiff would respectfully remind the Court that the entire theory of the Defendants defense(s) in the Second Summary Judgement -- are based in/on a completely new and contradictory theory. As such, and as set forth in Plaintiff's Response, it should fail in its face or is otherwise not cognizable at this "eleventh-hour" just before Trial.

DISCUSSION

Plaintiff will not set forth an extended Argument simply because the need for time to file his Narratives is patently apparent. This is based on the fact that at this time the Defendants have totally changed the landscape of the underlying "material facts" which could be disputed for Trial.

As such, Plaintiff contends that the fact of the matter is that in order for him to set forth proper and complete Narratives; he will need to understand what the Claims/Defenses/Counter-Claims and so forth are. This will enable him to properly apprise the Court his expected Witnesses Narratives.

Notwithstanding the above, at this time Plaintiff will not even be able to completely set forth who the Witnesses will be at the upcoming Trial -- simply because he does not know what theory(s) will be going to Trial. And because of this

it would not be equitable and just to require Plaintiff to file Witnesses Narratives and other pre-Trial materials simply because it will undoubtedly cause incomplete pleadings to be presented to the Court. Which will undoubtedly cause additional pleading to be filed and waste additional precious resources.

So, in order for Plaintiff to properly compile his Narratives and other materials; he respectfully submits that the Court should extend the time for filing his pre-Trial materials until the Court has disposed of the pending Motion to Dismiss, or in the alternative, Summary Judgement, now pending before the Court.

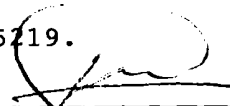
WHEREFORE PLAINTIFF PRAYS, that the Court will Enlarge the Time to file his Witnesses' Narratives for Fourteen (14) days after the Court's disposing of the Defendants' Motion.

AND FURTHERMORE, that the Court will Issue an Amended Scheduling Order addressing the Witnesses' Narratives and other pre-Trial filings and the timing form same.

Respectfully Submitted,

DECLARATION AND CERTIFICATE OF SERVICE

I, Juan Davila-Bajana, hereby declare and affirm, under the penalty of perjury pursuant to 28 USC §1746(2), that the foregoing pleading is true and correct to the best of my knowledge and recollection; and that I served, by first-class postage prepaid surrender to the prison officials, to Paul Kovac, AUSA, 700 Grant St., Ste. 4000, Pittsburgh, PA 15219.



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